



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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CHICAGO, IL 60604-3590

June 2, 2005

B-19J

Mr. Johnny Gerbitz
Federal Highway Administration
Highpoint Office Park
567 D'Onofrio Drive
Madison, Wisconsin 53719-2814

Re: Comments on the Draft Environmental Impact Statement (DEIS) for U.S. Highway 41 Oconto to Peshtigo in Oconto and Marinette Counties, Wisconsin, EIS No. 20050149

Dear Mr. Gerbitz:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the United States Environmental Protection Agency (EPA) Region 5 has reviewed the Draft Environmental Impact Statement (DEIS) for U.S. Highway (USH) 41 from Oconto to Peshtigo in Oconto and Marinette Counties in Wisconsin.

The proposed action is to reconstruct USH 41 from the City of Oconto to the city of Peshtigo, providing a divided multilane facility with controlled access and uninterrupted travel. The purpose of this proposed action is to provide a safe and efficient transportation system that serves present and future traffic demand while minimizing disturbance to the natural and built environment. The need for the proposed action is demonstrated through factors such as present and future traffic demand, existing highway characteristics and deficiencies, safety concerns, and system linkage and route importance. We believe that the Federal Highway Administration (FHWA) and Wisconsin Department of Transportation (WisDOT) have sufficiently defined the purpose and need for action in this corridor, therefore we concur with the Purpose & Need.

WisDOT and FHWA previously developed a Federal Draft EA for this project on May 17, 1999, which was released for public comment. Alternatives analyzed in that Federal Draft EA are essentially the same as those evaluated in detail in the Draft EIS. The entire corridor was divided into three segments: (1) City of Oconto, (2) rural section between Oconto and Peshtigo, and (3) City of Peshtigo. The alternatives considered in detail include different variations of bypasses around the cities and expanding on existing alignment. The process used for developing these alternatives and dropping others from evaluation was appropriate, therefore we concur with the Alternatives Brought Forward for Detailed Evaluation.

The EPA and other resource agencies have participated in extensive discussions regarding wetland and other aquatic resources likely to be impacted on the project dating back to February 2003. To date, the majority of EPA's concerns have centered on water and wetland impacts, the Clean Water Act Section 404 wetland permitting process, and the importance of the project's impacts given the area's resource base. Because of the amount of impacts to wetlands, EPA recommended that the NEPA documentation for the project be improved and that FHWA and WisDOT should consider developing an

Environmental Impact Statement for the project. Both of these recommendations were accepted by your Agency. The DEIS includes considerable amount of information on wetlands and water quality that we needed to assess the project's impacts. We commend FHWA and WisDOT for this effort. It has resulted in a much more thorough articulation of the work that has been done to date.

The DEIS states that WisDOT has identified a "recommended alternative" consisting of an alternative that bypasses the two cities and stays on existing alignment between them. This alternative utilizes a Near West Bypass of Oconto and a South Bypass of Peshtigo. Based on the information presented in the DEIS, we concur with the selection of this as the recommended alternative. For purposes of rating this document, we have considered this "recommended alternative" as the preferred alternative. Typically, if a preferred alternative is not identified in the DEIS, EPA would rate each of the alternatives evaluated in detail. In this case, we are treating "recommend alternative" and "preferred alternative" as being synonymous. It is clear that other alternatives could be considered after this point. However, based on the DEIS, we regard the recommended alternative as the environmentally preferred alternative.

We recommend that FHWA and WisDOT work closely with the U.S. Army Corps of Engineers on completing the functional assessment work. We understand that this is still on going. Of course, this will need to be completed before meaningful discussions on compensatory mitigation can begin. We urge the FHWA and WisDOT to do this work in between the DEIS and the Final Environmental Impact Statement. Given the large amount of wetland acreage impacted by this project, and the high quality of many of these systems, we remain concerned about the ability of WisDOT and FHWA to find appropriate compensatory mitigation sites for this project. EPA's detailed comments on the wetland and aquatic resources are enclosed. Due to these remaining concerns, we have rated this DEIS "EC-2" (environmental concerns-insufficient information). A summary of EPA's rating system under NEPA is enclosed.

We look forward to working with FHWA, WisDOT, and other resource agencies on this project as it progresses. If you have any questions, please contact Sherry Kamke at (312) 353-5794 or Cathy Garra at (312) 886-0241.

Sincerely yours,

/s/

Kenneth A. Westlake, Chief
NEPA Implementation Section
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Enclosures (2)

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Comments on the Draft Environmental Impact Statement U.S. 41 Highway, Oconto to Peshtigo, Wisconsin

Special Aquatic Sites

The Final Environmental Impact Statement (FEIS) should include additional stream information in Section IV, indicating whether or not the streams in the study area affected by project alternatives have geomorphology with a riffle-pool structure. Presenting this information consistently in the FEIS will contribute to both the NEPA process and any future Clean Water Act Section 404 permit process. Like wetlands, riffle and pool complexes, irrespective of quality, are considered to be “special aquatic sites” under the environmental regulations for 404 permits, the Section 404(b)(1) Guidelines, in Subpart E. Special aquatic sites carry the presumption that there are alternatives to dredging or filling them, at 40 CFR Part 230.10(a)(3). Since at least one alternative was avoided, in part, due to its impact to a high quality riffle-pool segment, this topic also should be carried to the discussion in Section VII of the FEIS. In this way Section VII would properly be expanded to examine the issue of the LEDPA alternative for all special aquatic sites, including riffle-pool complexes, in addition to wetlands. A third potential special aquatic site category for this study area would be sanctuaries and refuges designed under State and Federal laws or local ordinances. This topic is discussed in Sections III and IV, with no known impacts from any of the study alternatives. This conclusion should also be carried forward to Section VII for the FEIS.

Wetland Functional Assessment

We understand that there are refinements under way to the work on wetland quality from the Minnesota Rapid Assessment Method (MnRAM) analysis. An effort should be made to characterize the quality of the different proportions of wetlands to be affected by the proposed project in the FEIS. In turn, this will help establish goals for the quality as well as type of wetlands to be restored by compensatory mitigation.

Least Damaging Practicable Alternative (LEDPA) Documentation

The DEIS made substantial progress towards identifying the least environmentally damaging practicable alternative (LEDPA) for future 404 purposes in Section VII. The lack of practicability of the through-town alternatives for project Sections 1 and 3 has been documented. The recommended alternatives for bypass alternatives for the communities of Oconto and Peshtigo have been selected to present fewer impacts to acres of wetland, farmland, river and upland habitat and provide cost advantages to other alternatives. Section 2 makes use of the existing highway alignment, to cause a reduced impact to wetlands and other resources compared to a “new” alignment. Avoidance of the bog in Section 3 was not possible due to curve design standards, as discussed at our September 15, 2004, meeting.

Compensatory Wetland Mitigation Considerations

The project will have substantial impacts to wetlands, due to the nature of the distribution of the resource within the project area. The extent of this impact, about 200 acres, well exceeds the total of a typical year of permitted wetland losses from all of Wisconsin. Furthermore, nearly three quarters of the anticipated losses would be to wooded swamps. Forested wetland restoration is generally acknowledged to be technically difficult both for the need to achieve the correct

hydrology on site in order to establish and maintain a forested wetland and for the time it takes to grow trees. The difficulty of forested wetland restoration was recognized in Natural Research Council's study, Compensating for Wetland Losses under the Clean Water Act.

Because of the amount and difficulty of mitigation needed to offset the losses from this project, it will be necessary to go beyond the standard approach for highway projects to accomplishing sufficient quality and quantity of successful compensatory mitigation. Some wetland types, such as bogs, are beyond our scientific capacity to restore at this time. Fortunately, bog loss has been minimized. For losses replaced by similar wetland types in the same watershed, we anticipate needing to restore the wetlands at a ratio of 1.5:1 with some wetlands being compensated for at a ratio of 2:1 of acres lost to acres restored. We anticipate this higher ratio may be appropriate for some of the higher quality and more difficult to replace wetlands described in the DEIS. These ratios recognize the time and uncertainty involved in wetland restoration for the proposed project losses. We anticipate that little of the restoration work will be able to be done far enough in advance of project construction to achieve a functioning restored wetland system. In addition to these restoration ratios, additional acres of non-wetland buffer should be part of the design of the mitigation sites to provide water quality protection and other values to the wetland.

The FEIS needs to demonstrate the mitigation site screening progress in greater detail and provide direction and commitment on the criteria for compensatory mitigation. The current search in the 2.5-mile band on each side of the project corridor is appropriate to replace the lost wetland acres near the project. The restoration sites must be planned in areas where future land use will be compatible with preserving the new wetland mitigation site in perpetuity. Restoration sites should be spread out along the corridor in at least several locations, divided proportionally, between the "8-digit" Oconto and Peshtigo basins. This strategy is generally preferable to using a site farther away. If a mitigation bank such as the Peshtigo Brook Mitigation Bank is an alternative, its characteristics and suitability need to be described in the FEIS.

SUMMARY OF RATING DEFINITIONS AND FOLLOW UP ACTION*

Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impacts. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1-Adequate

The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collecting is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640 Policy and Procedures for the Review of the Federal Actions Impacting the Environment